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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO |
|------------------|-----------------------------|----------------------|---------------------|-----------------|
| 10/634,116 | 08/04/2003 | Kenneth Roger Jones | 1033.SS00379 | 5754 |
| 60533 | 7590 07/24/2006 | | EXAMINER | |
| | HAFFER, LLP ON THE LAKES | | BAYARD, DJENANE M | |
| SUITE 265 | ON THE LAKES | | ART UNIT | PAPER NUMBER |
| AUSTIN, TX 78746 | | | 2141 | |

DATE MAILED: 07/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| Application No. Application No. Application No. JONES ET AL | | | | | | | | |
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| ## Period for Reply AS HORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. E denieting of time may be available under the provisions of 37 CPR 1.138(a), in no event, however, may a reply be timely filled. E denieting of the reply is specified above, the maximum distatory parked way pay and will expire (50) MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. E denieting of the reply is specified above, the maximum distatory parked ways) and will expire (50) MONTH'S from the marting date of this communication (reply is specified above, the maximum distatory parked ways) and will expire (50) MONTH'S from the marting date of this communication (reply is specified above, the maximum distance the supplication to become ARANDONED, (39 U.S.C. § 133). And reply revised the fill of the state of the communication (reply in the communication). **Parked the marked the maximum distance the marting date of this communication, even if timely filed, may reduce any security provided the state of the communication (reply in the communication). **Provided the maximum distance of the communication (reply in the communication). **Provided the maximum distance of the communication (reply in the communication). **Provided the maximum distance of the communication of the communication. **Provided the maximum distance of the maximum distance of the communication. **Provided the maximum distance of the communication. **Provided the communication of the distance of the communication. **Provided the communication of the distance of the dist | | | Application No. | Applicant(s) | | | | |
| Department De | Office Action Summary | | 10/634,116 | JONES ET AL. | | | | |
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Art Unit: 2141

DETAILED ACTION

1. This is in response to Appeal Brief submitted on 4/17/06 in which claims 1-6 and 8-36 are pending.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 6 and 8-36 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3-21 of U.S. Patent No. 7085838. Although the conflicting claims are not identical, they are not patentably distinct from each other because even though where the conflicting claims are not identical, but the application claim is not patentably distinct from the reference claim(s) because the examined application claim is an obvious variation of the reference claim (s).

Claim 6 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1, 6 and 8 of U.S. Patent No. 7085838. Although the conflicting

claims are not identical, they are not patentably distinct from each other because even though where the conflicting claims are not identical, but the application claim is not patentably distinct from the reference claim(s) because the examined application claim is an obvious variation of the reference claim (s).

Claim 16 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 18 of U.S. Patent No. 7085838. Although the conflicting claims are not identical, they are not patentably distinct from each other because even though where the conflicting claims are not identical, but the application claim is not patentably distinct from the reference claim(s) because the examined application claim is an obvious variation of the reference claim (s).

Claim 21 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1,6 and 8 of U.S. Patent No. 7085838. Although the conflicting claims are not identical, they are not patentably distinct from each other because even though where the conflicting claims are not identical, but the application claim is not patentably distinct from the reference claim(s) because the examined application claim is an obvious variation of the reference claim (s).

Claim 24 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 18-20 of U.S. Patent No. 7085838. Although the conflicting claims are not identical, they are not patentably distinct from each other because even though where the conflicting claims are not identical, but the application claim is not patentably distinct from the reference claim(s) because the examined application claim is an obvious variation of the reference claim (s).

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Allowable Subject Matter

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3. Claims 1-5 are allowed.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Djenane M. Bayard whose telephone number is (571) 272-3878.

The examiner can normally be reached on Monday- Friday 5:30 AM- 3:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Djenane Bayard

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Patent Examiner

RUPAL DHARIA

DEDVISORY PATENT EXAMINER